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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,531	06/20/2001	Trevor Petruk	5150-52400	6393
35690	7590	07/15/2005	EXAMINER	
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398			VU, KIEU D	
			ART UNIT	PAPER NUMBER
			2173	

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/886,531

Applicant(s)

PETRUK ET AL.

Examiner

Kieu D. Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-19 and 28-34 is/are allowed.
- 6) ☒ Claim(s) 1, 8-9, and 20-21 is/are rejected.
- 7) ☒ Claim(s) 2-7 and 22-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

1. This Office Action is in response to the Amendment filed on 04/27/05.
2. Claims 1-34 are pending.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8-9, and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by McDonald et al ("McDonald", USP 5966532).

Regarding claims 1 and 21, McDonald teaches a method or memory medium for creating a graphical program (col 5, lines 6-12), comprising displaying information indicating a plurality of program processes wherein each program process includes a plurality of operations for accomplishing a result (process of inputting to or outputting from a graphical program, col 4, lines 10-13), wherein each program process has a corresponding graphical program template for performing the program process (template; col 5, lines 11, col 4, lines 14-15), wherein each graphical program template comprises a plurality of interconnected nodes (graphical code portions; col 3, lines 66-67, col 5, lines 1-3); receiving user input selecting a first program process from the plurality of program processes (user selects from a plurality of different types of graphical code portions or templates; col 4, lines 37-41), wherein the first program process has a corresponding first graphical program template for performing the first

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program process; including the first graphical program template in the graphical program in response to the user input (col 5, lines 8-12); wherein said including the first graphical program template in the graphical program comprises programmatically including a plurality of interconnected nodes in the graphical program for performing the first program process (configured graphical code portion or template is copied into the graphical program; col 5, lines 1-12).

Regarding claims 8 and 9, McDonald teaches each program process comprises a virtual instrumentation process, wherein each virtual instrumentation process comprises an industrial automation process (col 6, lines 16-18).

Regarding claim 20, McDonald teaches a method for creating a virtual instrument (col 9, lines 52-59) graphical program (col 5, lines 6-12), the method comprising displaying information indicating a plurality of virtual instrumentation processes wherein each virtual instrumentation program process includes a plurality of operations for accomplishing a result (configured graphical code portion), wherein each virtual instrumentation process has a corresponding graphical program template for performing the virtual instrumentation process (template; col 5, lines 11), wherein each graphical program template comprises a plurality of interconnected nodes (graphical code portions; col 5, lines 1-3); receiving user input selecting a first virtual instrumentation process from the plurality of virtual instrumentation processes (user selects from a plurality of different types of graphical code portions or templates; col 4, lines 37-41), wherein the first virtual instrumentation process has a corresponding first graphical program template for performing the first virtual instrumentation process; including the

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first graphical program template in the virtual instrument graphical program in response to the user input (col 5, lines 8-12); wherein said including the first graphical program template in the virtual instrument graphical program comprises including a plurality of interconnected nodes in the virtual instrument graphical program for performing the first virtual instrumentation process (configured graphical code portion or template is copied into the graphical program; col 5, lines 1-12).

***Allowable Subject Matter***

5. Claims 2-7 and 22-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 10-19 and 28-34 are allowed.

7. Response to Applicant's arguments filed on 04/27/05:

Applicant argues "The Examiner has asserted equivalence between the user interface controls taught in McDonald and the program processes recited in claim 1. However, Applicant submits that a program process as recited in claim 1 is not at all the same as a user interface control" and "A user interface control does not include a plurality of operations for accomplishing a result.....," it is noted that, according to Microsoft Press Computer Dictionary Third Edition, "control refers to program instructions that manage data-handling task." Therefore, a control can be reasonably interpreted as a program process which includes a plurality of operations for accomplishing a result since the control includes a plurality of instructions for handling data.

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Applicant's arguments regarding rejections of claims 10 and 28 are persuasive.

Claims 10 and 28 are allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached at 571-272-4048.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

and / or:

571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kieu D. Vu

